



GOODWIN

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August 24, 2016

Superfund Records Center
SITE: Keddy Mill - 0400
BREAK: 11.09
OTHER: 591861

BY CERTIFIED AND OVERNIGHT MAIL
RETURN RECEIPT REQUESTED

Leslie McVickar
Remedial Project Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
5 Post Office Square, Suite 100 (OSRR07-4)
Boston, MA 02109-3912

Re: General Notice Letter – Keddy Mill Superfund Site, Windham, Maine

Dear Ms. McVickar:

I am writing on behalf of Tyco International ("Tyco") in response to EPA's General Notice Letter of Potential Liability for Keddy Mill Superfund Site, Windham, Maine dated July 28, 2016 ("General Notice Letter").

The General Notice Letter states that "EPA has reason to believe that Tyco is a successor to a former owner/operator of the Site at the time of disposal of hazardous substances at the Site." General Notice Letter at 2. EPA has been misinformed. Tyco never owned or operated at the Site, and Tyco did not assume or succeed to the liabilities of any corporate predecessor that owned or operated at the Site.

I have enclosed a copy of a Claim Notice that Tyco recently sent to ITT Corporation demanding that it indemnify and hold Tyco harmless from any liabilities or claims arising from the General Notice Letter. As noted in the Claim Notice, ITT Corporation has acknowledged in its response to EPA's CERCLA § 104(e) request that its subsidiary, Grinnell Corporation (later known as ITT Grinnell Corporation and referred to hereinafter as "ITT Grinnell") and that company's predecessors, Ace Investment Company ("Ace") and Keddy Manufacturing Company ("Keddy"), formerly owned the property now known as the Keddy Mill Superfund Site and operated a facility there. ITT Corporation also has acknowledged that "Pipefittings were manufactured at the Site" (ITT's § 104(e) Response at 6), and it has produced business records showing that Keddy and its predecessors produced pipefittings, specifically, steel pipe flanges, at the Site.

In 1972, a *portion* of ITT Grinnell's business was transferred to the Grinnell Fire Protection Systems Company, Inc. ("GFPS"). The business that manufactured flanges and other pipe fittings – the business that ITT Corporation admits ITT Grinnell and its predecessors conducted at the Site – was *not*



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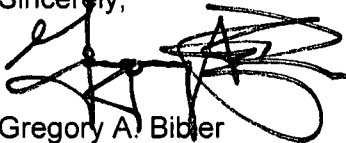
Leslie McVickar
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part of that transaction. GFPS only manufactured automatic sprinkler devices; it fabricated automatic sprinkler systems using piping and fittings purchased from other suppliers. ITT Grinnell, in fact, continued to own the Site, and to make steel pipe flanges there, until it conveyed the property to Park Corporation in August 1973. Any residual liability associated with former ownership and operation at the Site remained with ITT Grinnell. It was not assumed by Tyco.

Tyco purchased additional ITT Grinnell assets in 1986, nearly 13 years after the Site had been sold to Park Corporation. In the 1986 asset purchase, Tyco agreed to assume only those liabilities and obligations expressly identified in the schedules and exhibits incorporated into the asset purchase agreement. Neither the Site, nor any other property or business operated or formerly operated by ITT Grinnell or its predecessors in Maine, was listed in the asset purchase agreement as a liability or obligation to be assumed by Tyco. Furthermore, ITT Corporation agreed to indemnify and hold Tyco harmless from any losses, liabilities or claims that were not specifically assumed by Tyco under the asset purchase agreement. It is for that reason that Tyco has served ITT Corporation with the enclosed Claim Notice.

Based on the information provided with this letter, it should be evident that Tyco is not a person responsible as a former owner or operator, or as the successor to a former owner or operator, at the Keddy Mill Superfund Site. If there is anything further that EPA needs to confirm that is the case, however, please contact me directly and let me know what additional information I can provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory A. Bibler", with a large, stylized flourish at the end.

Gregory A. Bibler

GAB
Enclosure

cc: Matthew Tanzer, Tyco
Fern Fleischer Daves, ITT Corporation



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August 19, 2016

BY CERTIFIED AND OVERNIGHT MAIL
RETURN RECEIPT REQUESTED

ITT Corporation
1133 Westchester Avenue
White Plains, NY 10604
Attn: Corporate Secretary

Fern Fleischer Daves
Assistant General Counsel
ITT Corporation
1133 Westchester Avenue
White Plains, NY 10604

Re: Claim Notice Concerning Keddy Mill Superfund Site in Windham, ME

Ladies and Gentlemen:

This letter is a Claim Notice on behalf of the Tyco Indemnitees pursuant to Paragraph 13.3, "Procedure for Indemnification," in the Agreement of Purchase and Sale of Assets By and Among ITT Grinnell Corporation, ITT Industries of Canada Ltd., ITT Corporation, Grinnell Fire Protection Systems Company, Inc., Grinnell Fire Protection Systems Company Limited, and Tyco Laboratories, Inc. (the "1986 Purchase Agreement").

On July 28, 2016, the U.S. Environmental Protection Agency ("EPA") served upon Tyco International ("Tyco") a General Notice Letter of Potential Liability with respect to the Keddy Mill Superfund Site (the "Site") in Windham, Maine (the "General Notice Letter"). The General Notice Letter notified Tyco of its potential liability, as an alleged "successor to a former owner/operator of the Site at the time of disposal of hazardous substances at the Site," and demanded payment of response costs incurred through July 8, 2016 at the Site. The General Notice Letter demands that Tyco notify EPA in writing of its "willingness to address the contamination at the Site and willingness to pay EPA's outstanding response costs set out in this letter" within 30 days (*i.e.*, August 27, 2016).

According to the General Notice Letter, EPA sent a similar letter to Fern Fleischer Daves, on behalf of ITT Corporation, and encouraged Tyco to contact you at the above address. EPA provided Tyco with copies of ITT Corporation's response to EPA's information requests made pursuant to CERCLA § 104(e) ("ITT's 104(e) Response"), as well as corporate records and other historical information from



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ITT Corporation and other sources, to help the companies “begin organizing for future negotiations with EPA.”¹

Based on the documentation EPA has provided, and other information summarized below, it is apparent to Tyco that the General Notice Letter pertains to threatened or asserted liabilities resulting from or incurred in respect of operations and assets of the former Grinnell Division of ITT Corporation that were not expressly assumed by the Tyco Indemnitees under the 1986 Purchase Agreement. The liabilities threatened and asserted by EPA, therefore, constitute a Covered Claim as defined in Paragraph 13.1 of the 1986 Purchase Agreement. Tyco hereby serves notice of such Covered Claim and demands that the ITT Parties, including ITT Corporation, indemnify and hold harmless the Tyco Indemnitees from and against EPA's threatened and asserted claims. Given the 30-day deadline that EPA has established, and the further threat in the General Notice Letter that EPA may soon invoke the Special Notice procedures pursuant to CERCLA § 122(e), it is important that you respond promptly to this Claim Notice.

ITT's 104(e) Response

In ITT's 104(e) Response, ITT Corporation acknowledges that it is the successor, through a long series of corporate transactions, to the company originally known as International Telephone and Telegraph Corporation and later known, variously, as ITT Corporation, ITT Indiana, Inc., and ITT Industries, Inc. ITT Corporation also acknowledges that its subsidiary, Grinnell Corporation (later known as ITT Grinnell Corporation and referred to hereinafter as “ITT Grinnell”) and that company's predecessors, Ace Investment Company (“Ace”) and Keddy Manufacturing Company (“Keddy”), formerly owned the property now known as the Keddy Mill Superfund Site and operated a facility there. Finally, ITT Corporation has stated that ITT Grinnell manufactured “pipefittings at the Site,” and it has produced business records showing that Keddy and its predecessors likewise produced forged steel pipe flanges at the Site.

It is ITT Corporation's contention, however, that it did not succeed to the liabilities of ITT Grinnell, Ace, or Keddy as owners and operators of the Site because a *portion* of the ITT Grinnell business was divested by ITT Corporation in 1972. Specifically, ITT's 104(e) Response states, “If any environmental contamination did occur while the Keddy Mill was owned or operated by ACE, Grinnell or ITT Grinnell, [Grinnell Fire Protection Systems Company, Inc. (‘GFPS’)] assumed that liability in 1972. The stock of GFPS was acquired by Tyco Laboratories, Inc. in 1976.” Such a contention cannot be squared with a number of inconvenient facts, including that only ITT Grinnell's fire protection business (and not the pipe fitting and valve business) was carved out and transferred to GFPS in 1972. The business that manufactured flanges and other pipe fittings – the business that ITT Corporation admits ITT Grinnell and its predecessors conducted at the Site – was not part of the Fire Protection Division transferred to

¹ EPA Bates Numbered some but not all of the documents it produced. Documents are identified in this letter by EPA's Bates Numbers where available.



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GFPS. The Fire Protection Division only manufactured automatic sprinkler devices; it fabricated automatic sprinkler systems using piping and fittings purchased from other suppliers. After the Fire Protection Division had been transferred to GFPS in July 1972, ITT Grinnell continued to own the Site, and to make forged steel flanges there, until it conveyed the property to Park Corporation in August 1973. As explained further below, any residual liability associated with former ownership and operation at the Site remained with ITT Grinnell. It was not assumed by Tyco.

On September 24, 1971, a federal court ordered ITT Grinnell "to divest by September 24, 1973 'The Fire Protection Division of Grinnell' as specifically defined in Section II(D)" of the judgment. United States v. Int'l Tel. and Tel. Corp., No. 13,319, 1971 WL 548 (D. Conn. Sept. 24, 1971)." On July 1, 1972, ITT Grinnell transferred the "Fire Protection Division of Grinnell" to a newly created and independent subsidiary – the Grinnell Fire Protection Systems Company, Inc., or GFPS. This transfer of assets is memorialized in the July 1, 1972 Assignment and Assumption of Liabilities. Doc. 583461, Exhibit B (the "1972 Assignment"). Contrary to ITT Corporation's assertions, this document does not show that any liability associated with the Site (which ITT Grinnell continued to own) was transferred to or assumed by GFPS.

The 1972 Assignment (p.1) states:

Whereas ITT Grinnell, in preparation for compliance with the final judgment, dated September 24, 1971, in United States v. International Telephone and Telegraph Corporation, U.S.D.C. (Conn.) Civil Action No. 13,319, which final judgment required International Telephone and Telegraph Corporation (hereinafter referred to as ITT), and its wholly-owned subsidiary ITT Grinnell to divest all their interest in the ITT Grinnell Fire Protection Division, did...make a contribution to the capital of its wholly-owned subsidiary GFPS, effective as of the opening of business on July 1, 1972, of all the assets of said Fire Protection Division, subject to the liabilities of said Fire Protection Division.

The 1972 Assignment does not define the Fire Protection Division of Grinnell, except with reference to the judgment requiring its divestment. The judgment defines the Fire Protection Division of Grinnell as follows: "the assets and operations of Grinnell Corporation and any of its subsidiaries related to the manufacture of automatic sprinkler devices of the fabrication, installation or sale of automatic sprinkler systems, and shall include the name 'Grinnell' and any related names or trademarks now used in said manufacture, fabrication, installation or sale, **but shall not include any assets or operations related to the manufacture of any product other than automatic sprinkler devices.**" 1971 WL 548, at *1 (emphasis added). This definition excludes the Keddy Mill Site because there is no evidence the Site was ever involved in the manufacture of automatic sprinkler devices. In fact, ITT's 104(e) Response acknowledges, and the business records that ITT Corporation produced to EPA show, that ITT Grinnell



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and Keddy produced forged pipe flanges at the Site, not automatic sprinkler devices.² See, e.g., Doc. 584361, p. 4, ¶ 3(a). Accordingly, the Site was not part of the Fire Protection Division of Grinnell, and was not transferred to GFPS.

On January 16, 1976, Tyco Laboratories, Inc. purchased “all the issued and outstanding capital stock of GFPS.” Doc. 584301, Exhibit A, Stock Purchase and Sale Agreement, ¶ 1.1 (the “1976 Stock Agreement”). There is no indication in the 1976 Stock Agreement, express or implied, that the Site was in any way related to the purchase. Given that ITT Grinnell had retained ownership of the Site after transferring the Fire Protection Division to GFPS, and that neither GFPS nor ITT Grinnell still owned the Site in 1976, that is hardly surprising. Notably, the 1976 Stock Agreement (Paragraph 8.7) contains a non-compete clause with respect to the manufacture and sale of automatic sprinkler devices, confirming that the core business being conveyed to Tyco Laboratories, Inc. in fact was the *manufacture* of automatic sprinkler devices and the *fabrication* of automatic sprinkler systems:

ITT agrees that for a period of six years beginning on the Closing Date, neither ITT nor any person controlled directly or indirectly by ITT shall engage in the manufacture or sale of automatic sprinkler devices or in the fabrication, installation, or sale of automatic sprinkler systems in competition with GFPS.

As noted above, ITT Grinnell and its predecessors manufactured steel pipe flanges at the Site, not automatic sprinkler devices. Accordingly, assets and liabilities associated with the Site were not part of the Fire Protection Division transferred to GFPS.³

² “Mr. Lawrence Keddy owned or controlled four companies jointly engaged in the production and sale of forged steel flanges with facilities in Maine and Massachusetts. At the time, the manufacturing plant referred to as the Keddy Mill in Windham, Maine (which is the subject of this inquiry) was operated by Cumberland Manufacturing Corporation and owned by Atlantic Mills, Inc. In 1961, Mr. Keddy transferred some – but not all – of the assets of these businesses to a new Delaware legal entity called Keddy Manufacturing Company. Thereafter, Mr. Keddy was employed by Grinnell as a manager. Notably, some of Mr. Keddy’s assets were excluded from these 1961 transactions, including certain equipment and certain real estate owned by Atlantic Miss, Inc. which was conveyed to Mallison Corporation. See documents attached hereto as Exhibit B.” ITT 104(e) Response, p. 4, ¶ 3(a).

³ Other historical documents that EPA provided to Tyco as attachments to the General Notice Letter bear this out. See, e.g., Doc. 590453, Company History and Timeline, Anvil EPS/Avil Int’l Co./Grinnell Corp., pp. 1-2 (“In 1969 Grinnell Corporation was acquired by International Telephone & Telegraph Co. (ITT). At that time Grinnell consisted of several divisions serving the broad fields of Fire Protection Division, which became Grinnell Fire Protection Systems Company, Inc. (GFPS), an in[d]ependent company. Other Grinnell divisions remained a part of ITT. In 1976, Tyco Laboratories of Exeter, NH purchased GFPS and, in 1986, acquired Grinnell Manufacturing and Supply Sales reuniting them with GFPS.”); Doc. 591110, Gale Directory of Company Histories—Grinnell Corporation, pp. 3-4 (“By 1969, Grinnell operated 12 manufacturing plants in the United States and Canada and 42 warehouses in the United States, Canada, Mexico, and Germany. The Supply and Sales Division contributed to nearly two-thirds of the company’s sales volume. Of this total, fabricated pipe fittings, valves, and hangers



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The deed through which ITT Grinnell conveyed title to the Site to Park Corporation is dated August 21, 1973. That deed states, in pertinent part:

Know all men by these presents, that ITT Grinnell Corporation, formerly known as Grinnell Corporation, a corporation organized and existing under the laws of the State of Delaware and located at Providence in the County of Providence and State of Rhode Island, in consideration of One Dollar (\$1.00) and other valuable consideration of Park Corporation, a corporation organized and existing under the laws of the State of Nevada...does hereby give, grant, bargain, sell and convey, unto the said Park Corporation...a certain lot or parcel of land with the buildings thereon, situated in the Town of Windham, County of Cumberland and State of Maine bounded and described as follows: [wherein the instrument describes the boundaries and location of the Site].

Doc. 590472, 1973 Keddy Mill Deed.⁴ Again, ITT Grinnell could not have conveyed the Site in 1973 if it had transferred that property to GFPS in 1972.

Accordingly, the Site was not part of the Fire Protection Division of Grinnell. ITT Grinnell retained all liability with respect to the Site at the time of and after the 1972 Assignment of the Fire Protection Division of Grinnell to GFPS. And subsequently, Tyco did not acquire any liabilities with respect to the Site through its 1976 Stock Purchase of GFPS.

Covered Claims under the 1986 Purchase Agreement

On January 31, 1986 – nearly 13 years after ITT Grinnell sold the Site to Park Corporation – Tyco purchased additional ITT Grinnell assets. See Doc. 584301, Exhibit C, 1986 Purchase Agreement. With those assets, Tyco only assumed liabilities expressly identified in the Agreement. The 1986 Purchase Agreement states:

Purchasers shall this day purchase, the 'Transferred Assets' as defined in the respective Sellers' Bills of Sale, *free and clear of all liabilities, obligations, liens and encumbrances excepting only those liabilities and obligations which are expressly to be assumed by*

accounted for half of the sales, with the rest chiefly coming from custom bending and shaping pipe made by other manufacturers to custom specifications. Fire protection constituted another 22 percent of sales. The Industrial Piping Division, producers of piping systems for utility power plants and pipe process networks for chemical companies, accounted for about 10 percent of sales. The remaining 2.5 percent came from industrial humidification...In 1971 a consent judgment required ITT to divest itself of Grinnell's fire-protection division...Operating as Grinnell Fire Protection Systems Co., the unit...was purchased by Tyco Laboratories in 1976...In 1986, Tyco bought 48 U.S. and Canadian production and distribution operations of ITT Grinnell for about \$220 million.")

⁴ This document is also located at Doc. 584301, Exhibit B.



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Purchasers hereunder and those liens and encumbrances which are expressly permitted by the terms hereof.

1986 Purchase Agreement, ¶ 2.1 (emphasis added). Notably, liabilities associated with prior ownership and operation of the Site by Keddy, Ace, and ITT Grinnell were not expressly identified nor were they assumed by Tyco under the 1986 Purchase Agreement.

The 1986 Purchase Agreement makes clear that Tyco assumed only those liabilities specified in an appended "Liabilities Undertaking": "On the Closing Date, the U.S. Purchaser and the Canadian Purchaser shall each execute and deliver a Liabilities Undertaking in the form of Exhibit 2 hereto in favor of the U.S. Seller and the Canadian Seller, respectively."⁵ 1986 Purchase Agreement, ¶ 2.6. The purchasers executed a Liabilities Undertaking on January 31, 1986 (attached hereto as **Exhibit 1**). This Liabilities Undertaking describes the liabilities Tyco expressly assumed, including the following:

Purchaser hereby undertakes, assumes and agrees to perform, pay or discharge the following...all obligations and liabilities...of Seller, to the extent incurred on or before the date hereof in connection with the operations or assets of the Division, which are reflected on the face of the Closing Date Balance Sheet.

Exhibit 1, Liabilities Undertaking, ¶ 1(a). Operations and assets of the "Division"⁶ are listed in two schedules attached to the 1986 Purchase Agreement – neither include any reference to the Site or any other property in the State of Maine for that matter. See Doc. 584301, Exhibit C-1, 1986 Purchase Agreement, Schedule 4.11(a) Real Property; Doc. 584301, Exhibit C-2, 1986 Purchase Agreement, Schedule 1(iv), Closed Branches of the Historical Division. The 1986 Purchase Agreement confirms that Schedule 4.11(a) constitutes an "accurate and complete list and description of [a]ll real property related to the Division's business owned by each Seller or in which each Seller has a leasehold or other interest or which is used in connection with the operation of the Division's business." 1986 Purchase Agreement, ¶ 4.11. In sum, nothing in the 1986 Purchase Agreement, or its schedules, suggests or indicates that Tyco assumed any liabilities with respect to the Site.

⁵ The U.S. Purchaser is defined as the Grinnell Fire Protection Systems Company, Inc., and the Canadian Purchaser is defined as Grinnell Fire Protection Systems Company Limited, both of which were subsidiaries of Tyco Laboratories, Inc. 1986 Purchase Agreement, p. 1.

⁶ The 1986 Purchase Agreement defines the "Division" as the "Historical Division exclusive of the assets listed on Schedule A to each Bill of Sale." ¶ 1(iii). The Agreement defines the "Historical Division" as "Sellers' Manufacturing and Supply Division (also known as the Core Grinnell Division), including without limitation all operations conducted at Sellers' premises at the addresses listed on Schedule 4.11(a) hereto and all operations formerly conducted at the addresses listed on Schedule 1(iv) hereto, which have been managed from the U.S. Seller's headquarters at 260 West Exchange Street, Providence, Rhode Island." *Id.* at ¶ 1(iv).



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Page 7

In the 1986 Purchase Agreement, the ITT Parties agreed to indemnify the Tyco Indemnities for any liabilities not expressly assumed:

ITT Parties jointly and severally agree to indemnify the Tyco Parties...and to hold them harmless, from, against and in respect of (and shall on demand reimburse them for):...any and all loss, liability or damage resulting from or incurred in respect of any liabilities or obligations of a Seller or the Division (i) *which are not specifically assumed by a Purchaser* pursuant to the terms of this Agreement or the Liabilities Undertaking....

1986 Purchase Agreement, ¶ 13.1(c) (emphasis added).

In short, (1) ITT Grinnell retained ownership of the Site after the Fire Protection Division was transferred to GFPS in 1972; (2) ITT Grinnell retained any residual owner/operator liability with respect to the Site after it sold the property to Park Corporation in 1973; (3) liabilities associated with the Site were not identified in the Liabilities Undertaking or otherwise listed in the 1986 Purchase Agreement as liabilities expressly assumed by the Tyco Indemnities; (4) the ITT Parties agreed in the 1986 Purchase Agreement to indemnify the Tyco Indemnities for any claimed or threatened losses resulting from liabilities not expressly assumed in the 1986 Purchase Agreement; and (5) EPA's General Notice Letter asserts and threatens claims against the Tyco Indemnities with respect to the former ownership and operation of the Keddy facility by ITT Grinnell and its predecessors at the Site. The General Notice Letter therefore constitutes a "Covered Claim" pursuant to the 1986 Purchase Agreement for which the Tyco Indemnities now demand that the ITT Parties indemnify and hold them harmless.

Given EPA's impending deadline, I would appreciate your prompt reply as soon as you have taken the opportunity to review and evaluate this information.

Sincerely,

/s/ Gregory A. Bibler

Gregory A. Bibler

Attachment

cc: Matthew Tanzer, Tyco (w/ attachment)

EXHIBIT 1

LIABILITIES UNDERTAKING

UNDERTAKING dated January 31, 1986 by GRINNELL FIRE PROTECTION SYSTEMS COMPANY, INC., a Delaware corporation (hereinafter called "Purchaser"), in favor of ITT GRINNELL CORPORATION, a Delaware corporation (hereinafter called "Seller").

W I T N E S S E T H:

WHEREAS, pursuant to an Agreement of Purchase and Sale of Assets dated January 31, 1986 among Purchaser, Seller and others (the "Agreement"), Seller has concurrently herewith sold, assigned, transferred, conveyed and delivered to Purchaser certain of the Purchased Assets (such term, and all other terms used but not defined herein, having the meaning ascribed thereto in the Agreement); and

WHEREAS, in partial consideration therefor, the Agreement requires Purchaser to execute and deliver to Seller this Undertaking;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which by Purchaser is hereby acknowledged, Purchaser hereby agrees as follows:

1. Subject to the other provisions of this Undertaking, Purchaser hereby undertakes, assumes and agrees to perform, pay or discharge the following:

(a) all obligations and liabilities (other than in respect of product warranties, Product Liabilities (as defined below), Safe Harbor Leases, Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, which subjects are governed by subparagraphs (c) through (f) below) of Seller, to the extent incurred on or before the date hereof in connection with the operations or assets of the Division, which are reflected on the face of the Closing Date Balance Sheet;

(b) all obligations (other than in respect of product warranties, Product Liabilities (as defined below), Safe Harbor Leases, Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, which subjects are governed by subparagraphs (c) through (f) below) of Seller under contracts, agreements,

leases, licenses and commitments Seller's rights under which are being assigned to Purchaser pursuant to the Agreement, but only to the extent that the payment or performance of such obligations first comes due after the date hereof;

(c) Seller's obligations to repair, replace or make purchase-price refunds under product warranties (including, without limitation, those arising under the Uniform Commercial Code) arising from the manufacture or sale of merchandise which was manufactured or sold by the Division on or prior to the date hereof; but the aggregate liability of Purchaser and Grinnell Fire Protection Systems Company Limited (the "Other Purchaser") under this paragraph (c) and the corresponding paragraph (c) of the Liabilities Undertaking of even date herewith by the Other Purchaser in favor of ITT Industries of Canada Ltd. (the "Other Seller") shall not be greater than \$500,000; and

(d) Seller's liabilities for bodily injury or property damage as the manufacturer or seller of merchandise manufactured or sold, or as the provider of services rendered, by the Division on or prior to the date hereof ("Product Liabilities"), but only to the extent that the injury or damage giving rise to such liability occurs after the date hereof; but Purchaser does not hereby assume any liability to the extent that such liabilities result from the acts or omissions of any ITT Affiliate or ITT Party other than the Division (including, without limitation, liability which results from any defect in a product which arose when the product was manufactured by a facility not included in the Division); and

(e) Seller's obligations and liabilities under Safe Harbor Leases, as amended, but only to the extent provided in Section 12 of the Agreement; and

(f) Seller's obligations and liabilities in respect of Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, but only to the extent set forth in Section 6 of the Agreement; and

(g) the labor arbitration cases and grievance cases known as 85-91 (C. Isan), 85-94 (H. Mohr), 85-103 (R. Schrum) and 86-3 (H. Boyd), referred to in Schedule 4.8 of the Agreement.

2. Notwithstanding anything to the contrary contained above, the liabilities and obligations assumed by Purchaser under Paragraph 1 hereof shall not include any:

(a) legal, accounting, brokerage, finder's fee, taxes or other expenses incurred by Seller in connection with the Agreement or the consummation of the transactions contemplated thereby, except as otherwise provided in Section 16.6 of the Agreement with respect to transfer and documentary taxes; or

(b) liabilities or obligations of any nature to any ITT Affiliate, the Other Seller or any past or present shareholder of Seller or the Other Seller, other than liabilities and obligations arising out of commercial transactions in the ordinary course of business; or

(c) federal, state or local income, franchise, payroll or similar taxes; or

(d) liabilities or obligations of Seller resulting or arising out of any breach or any non-performance prior to the close of business on the date hereof by any ITT Party or ITT Affiliate of any contract, agreement, lease, license, commitment or obligation imposed by law or otherwise; or

(e) liabilities or obligations arising under any contract which has not been assigned to Purchaser; or

(f) liabilities or obligations incurred by Seller after the Closing Date; or

(g) liabilities or obligations excluded by Section 2.7(i) of the Agreement, but only as long as they are so excluded; or

(h) liabilities or obligations resulting from any noncompliance with applicable law or governmental rule, regulation or order by Seller, the Other Seller or any ITT Affiliate on or prior to the date hereof; or

(i) liabilities or undertakings under tax benefit transfer agreements or "safe harbor lease agreements" (as that term is used in Section 168(f)(8) of the U.S. Internal Revenue Code of 1954, as amended), other than the Safe Harbor Leases; or

(j) liabilities or obligations in respect of notes, checks, drafts, letters of credit, bankers' acceptances and other instruments of payment; or

(k) obligations or liabilities for bonuses, to the extent awarded for periods prior to 1986; or

(l) obligations or liabilities for worker's compensation and liability insurance premiums, and worker's compensation liability; or

(m) obligations or liabilities in respect of pending litigation and other legal proceedings, except that this clause (m) shall not affect Purchaser's assumption under paragraphs 1(c) and (g) hereof; or

(n) obligations or liabilities for audit expenses; or

(o) obligations or liabilities which, under the terms of the Agreement, any ITT Party has agreed to bear; or

(p) obligations or liabilities that are required pursuant to the Agreement to have been reflected on the face of the Closing Date Balance Sheet, to the extent that they are not so reflected (or are not reflected as fully as required); or

(q) all liability for personal injury or property damage occurring on or prior to the Closing Date; or

(r) obligations or liabilities under employment agreements with Thomas Cook and Harold Nichols; or

(s) accounts payable to drawee banks with respect to checks drawn but not yet paid; or

(t) liabilities related to the Sunoco Building in Henderson, TN; or

(u) escheat claims in respect of unclaimed checks; or

(v) liabilities in respect of the ITT Investment and Savings Plan; or

(w) obligations or liabilities under the three-party distributor agreements (referred to in Schedule 4.11(f) of the Agreement) among the U.S. Seller's Dia-Flo Division, the Historical Division and each industrial diaphragm valve distributor.

3. Purchaser's assumption hereunder of Seller's liabilities and obligations shall be without prejudice to Purchaser's (and other Tyco Parties') right to indemnification under Section 13.1 of the Agreement (other than clause (c)(i) thereof). However, notwithstanding Paragraph 1 hereof, in the event that Purchaser discovers that it has assumed an obligation pursuant to Paragraph 1(b) hereof which was required to have been disclosed in a schedule to the Agreement but which was not so disclosed (or was not accurately disclosed), the Purchaser may, by notice given to Seller within 90 days after Purchaser discovers such obligation (or, if later, 90 days after Purchaser discovers a material aspect of such obligation), rescind (i) the assumption hereunder of such obligation in its entirety insofar as it then remains undischarged and (ii) the assignment pursuant to the Agreement of all rights which (as evidenced by the applicable documents) are consideration for such obligation insofar as such rights then remain outstanding and relate to the portion of such obligation to which such rescission applies.

4. Nothing contained herein shall require Purchaser to pay or discharge any liabilities or obligations expressly assumed hereby so long as Purchaser shall in good faith contest or cause to be contested the amount or validity thereof; but this paragraph 4 does not qualify Purchaser's obligations under Section 13.2(c).

5. Other than as specifically stated above, Purchaser assumes no liability or obligation of Seller by this Undertaking (whether or not Purchaser has permitted the Purchased Assets to be encumbered by any lien securing an unassumed obligation or liability). No person, firm or corporation other than Seller and ITT shall have any rights under this Undertaking or the provisions contained herein.

GRINNELL FIRE PROTECTION SYSTEMS
COMPANY, INC.

By: 

L. Dennis Kozlowski
President

LIABILITIES UNDERTAKING

UNDERTAKING dated January 31, 1986 by GRINNELL FIRE PROTECTION SYSTEMS COMPANY LIMITED, a Canadian corporation (hereinafter called "Purchaser"), in favor of ITT INDUSTRIES OF CANADA LTD., a Canadian corporation (hereinafter called "Seller").

W I T N E S S E T H:

WHEREAS, pursuant to an Agreement of Purchase and Sale of Assets dated January 31, 1986 among Purchaser, Seller and others (the "Agreement"), Seller has concurrently herewith sold, assigned, transferred, conveyed and delivered to Purchaser certain of the Purchased Assets (such term, and all other terms used but not defined herein, having the meaning ascribed thereto in the Agreement); and

WHEREAS, in partial consideration therefor, the Agreement requires Purchaser to execute and deliver to Seller this Undertaking;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which by Purchaser is hereby acknowledged, Purchaser hereby agrees as follows:

1. Subject to the other provisions of this Undertaking, Purchaser hereby undertakes, assumes and agrees to perform, pay or discharge the following:

(a) all obligations and liabilities (other than in respect of product warranties, Product Liabilities (as defined below), Safe Harbor Leases, Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, which subjects are governed by subparagraphs (c) through (f) below) of Seller, to the extent incurred on or before the date hereof in connection with the operations or assets of the Division, which are reflected on the face of the Closing Date Balance Sheet;

(b) all obligations (other than in respect of product warranties, Product Liabilities (as defined below), Safe Harbor Leases, Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, which subjects are governed by subparagraphs (c) through (f) below) of Seller under contracts, agreements,

leases, licenses and commitments Seller's rights under which are being assigned to Purchaser pursuant to the Agreement, but only to the extent that the payment or performance of such obligations first comes due after the date hereof;

(c) Seller's obligations to repair, replace or make purchase-price refunds under product warranties (including, without limitation, those arising under the Uniform Commercial Code) arising from the manufacture or sale of merchandise which was manufactured or sold by the Division on or prior to the date hereof; but the aggregate liability of Purchaser and Grinnell Fire Protection Systems Company, Inc. (the "Other Purchaser") under this paragraph (c) and the corresponding paragraph (c) of the Liabilities Undertaking of even date herewith by the Other Purchaser in favor of ITT Grinnell Corporation (the "Other Seller") shall not be greater than \$500,000; and

(d) Seller's liabilities for bodily injury or property damage as the manufacturer or seller of merchandise manufactured or sold, or as the provider of services rendered, by the Division on or prior to the date hereof ("Product Liabilities"), but only to the extent that the injury or damage giving rise to such liability occurs after the date hereof; but Purchaser does not hereby assume any liability to the extent that such liabilities result from the acts or omissions of any ITT Affiliate or ITT Party other than the Division (including, without limitation, liability which results from any defect in a product which arose when the product was manufactured by a facility not included in the Division); and

(e) Seller's obligations and liabilities under Safe Harbor Leases, as amended, but only to the extent provided in Section 12 of the Agreement; and

(f) Seller's obligations and liabilities in respect of Division Benefit Plans and Multiemployer Plans, or any other employee compensation or benefit plans or arrangements, or employment policies, practices or arrangements, but only to the extent set forth in Section 6 of the Agreement; and

(g) the labor arbitration cases and grievance cases known as 85-91 (C. Isan), 85-94 (H. Mohr), 85-103 (R. Schrum) and 86-3 (H. Boyd), referred to in Schedule 4.8 of the Agreement.

2. Notwithstanding anything to the contrary contained above, the liabilities and obligations assumed by Purchaser under Paragraph 1 hereof shall not include any:

(a) legal, accounting, brokerage, finder's fee, taxes or other expenses incurred by Seller in connection with the Agreement or the consummation of the transactions contemplated thereby, except as otherwise provided in Section 16.6 of the Agreement with respect to transfer and documentary taxes; or

(b) liabilities or obligations of any nature to any ITT Affiliate, the Other Seller or any past or present shareholder of Seller or the Other Seller, other than liabilities and obligations arising out of commercial transactions in the ordinary course of business; or

(c) federal, state or local income, franchise, payroll or similar taxes; or

(d) liabilities or obligations of Seller resulting or arising out of any breach or any non-performance prior to the close of business on the date hereof by any ITT Party or ITT Affiliate of any contract, agreement, lease, license, commitment or obligation imposed by law or otherwise; or

(e) liabilities or obligations arising under any contract which has not been assigned to Purchaser; or

(f) liabilities or obligations incurred by Seller after the Closing Date; or

(g) liabilities or obligations excluded by Section 2.7(i) of the Agreement, but only as long as they are so excluded; or

(h) liabilities or obligations resulting from any noncompliance with applicable law or governmental rule, regulation or order by Seller, the Other Seller or any ITT Affiliate on or prior to the date hereof; or

(i) liabilities or undertakings under tax benefit transfer agreements or "safe harbor lease agreements" (as that term is used in Section 168(f)(8) of the U.S. Internal Revenue Code of 1954, as amended), other than the Safe Harbor Leases; or

(j) liabilities or obligations in respect of notes, checks, drafts, letters of credit, bankers' acceptances and other instruments of payment; or

(k) obligations or liabilities for bonuses, to the extent awarded for periods prior to 1986; or

(l) obligations or liabilities for worker's compensation and liability insurance premiums, and worker's compensation liability; or

(m) obligations or liabilities in respect of pending litigation and other legal proceedings, except that this clause (m) shall not affect Purchaser's assumption under paragraphs 1(c) and (g) hereof; or

(n) obligations or liabilities for audit expenses; or

(o) obligations or liabilities which, under the terms of the Agreement, any ITT Party has agreed to bear; or

(p) obligations or liabilities that are required pursuant to the Agreement to have been reflected on the face of the Closing Date Balance Sheet, to the extent that they are not so reflected (or are not reflected as fully as required); or

(q) all liability for personal injury or property damage occurring on or prior to the Closing Date; or

(r) obligations or liabilities under employment agreements with Thomas Cook and Harold Nichols; or

(s) accounts payable to drawee banks with respect to checks drawn but not yet paid; or

(t) liabilities related to the Sunoco Building in Henderson, TN; or

(u) escheat claims in respect of unclaimed checks; or

(v) liabilities in respect of the ITT Investment and Savings Plan; or

(w) obligations or liabilities under the three-party distributor agreements (referred to in Schedule 4.11(f) of the Agreement) among the U.S. Seller's Dia-Flo Division, the Historical Division and each industrial diaphragm valve distributor.

3. Purchaser's assumption hereunder of Seller's liabilities and obligations shall be without prejudice to Purchaser's (and other Tyco Parties') right to indemnification under Section 13.1 of the Agreement (other than clause (c)(i) thereof). However, notwithstanding Paragraph 1 hereof, in the event that Purchaser discovers that it has assumed an obligation pursuant to Paragraph 1(b) hereof which was required to have been disclosed in a schedule to the Agreement but which was not so disclosed (or was not accurately disclosed), the Purchaser may, by notice given to Seller within 90 days after Purchaser discovers such obligation (or, if later, 90 days after Purchaser discovers a material aspect of such obligation), rescind (i) the assumption hereunder of such obligation in its entirety insofar as it then remains undischarged and (ii) the assignment pursuant to the Agreement of all rights which (as evidenced by the applicable documents) are consideration for such obligation insofar as such rights then remain outstanding and relate to the portion of such obligation to which such rescission applies.

4. Nothing contained herein shall require Purchaser to pay or discharge any liabilities or obligations expressly assumed hereby so long as Purchaser shall in good faith contest or cause to be contested the amount or validity thereof; but this paragraph 4 does not qualify Purchaser's obligations under Section 13.2(c).

5. Other than as specifically stated above, Purchaser assumes no liability or obligation of Seller by this Undertaking (whether or not Purchaser has permitted the Purchased Assets to be encumbered by any lien securing an unassumed obligation or liability). No person, firm or corporation other than Seller and ITT shall have any rights under this Undertaking or the provisions contained herein.

GRINNELL FIRE PROTECTION SYSTEMS
COMPANY LIMITED

By: _____

L. Dennis Rozlowski
Chairman of the Board